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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 305th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 13 November 1997, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.305/Add.1

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Portugal (CAT/C/25/Add.10; HRI/CORE/1/Add.20)

1. At the invitation of the Chairman, Mr. Esteves Remédio, Ms. de Matos, Ms. Alves Martins and Mr. Gomes Dias (Portugal) took places at the Committee table.

2. Mr. ESTEVES REMÉDIO (Portugal) said that his delegation wished to inform the Committee of some recent developments that should enable further progress to be made in implementing the principles of the Convention, particularly in the light of the recommendations made by the Committee following the submission of Portugal's initial periodic report (CAT/C/9/Add.15) in 1993.

3. Work on the fourth revision of the Constitution of the Portuguese Republic had recently been completed, with the publication of Constitutional Act No. 1/97, of 20 September. One important amendment concerned the ending of the jurisdiction of military courts over purely military crimes. Henceforth, except in time of war, such crimes would come under the jurisdiction of special courts of the judicial branch (arts. 211 (3) and 213).

4. A new article 208 proclaimed the importance of the role of lawyers as an essential element of the administration of justice and left the definition of their immunities to ordinary legislation. A new paragraph 7 of article 32 explicitly set forth the right of the victim to participate in the criminal proceedings, a right already recognized in Portuguese legal tradition.

5. Article 33 expressly proclaimed the principle that extradition was impossible when the offence was liable to a penalty causing irreversible harm to physical integrity. Extradition in connection with an offence subject to life imprisonment had been rendered more flexible, while retaining the requirement for guarantees that the sentence would not be executed; the purpose was to reconcile Portugal's international undertakings and the requirements of international cooperation with the principles of its own legal system, under which that penalty had been abolished in 1886.

6. The Code of Criminal Procedure and the Penal Code had also undergone substantial reforms. The draft revision of the former, which had been completed and submitted to the competent bodies, had the general objective of accelerating criminal procedure and rendering it more dignified. Thus, provision was made, subject to the rights of the defendant set forth in the new article 32, paragraph 6, of the Constitution, for the accused to be tried in absentia when he had been duly notified of the proceedings initiated against him.

7. With regard to the victim's rights, Act No. 20/96 of 6 July permitted participation in the criminal proceedings by immigrant community anti-racist or human rights associations, when the offence involved racist or xenophobic discriminatory conduct. Other legislative initiatives concerned the appointment of legally qualified assistants to prepare judicial documents, the

establishment of a central department to coordinate the investigation of serious crime, especially organized crime, and measures to improve the training of the judiciary.

8. Efforts had continued to make judges, lawyers, police and prison officers and social workers more aware of the main international instruments dealing with human rights and criminal matters, particularly those of the United Nations and the Council of Europe. For example, in 1995, the training programmes for prison warders had been enhanced. Members of the general public were also being made more aware of the existence of standards and principles whose application might concern them. For example, in 1995, the Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice had been published in Portuguese, as had, more recently, Penal Reform International's handbook Making Standards Work. Both texts were currently being used in training activities in Portugal and other Portuguese-speaking countries. It was to be hoped that those training and dissemination measures would assist competent domestic bodies, such as the Inspectorate-General of Internal Administration, to monitor the application of the standards and principles contained in the Convention.

9. Efforts had continued to protect and promote human rights in the prisons system. Concern regarding overcrowding in prisons had led to the adoption of a Programme of Action for the Prisons System, which included both legislation and administrative measures in areas such as the promotion of interdepartmental cooperation, the construction and renovation of prisons, recruitment of personnel and expansion of budgets. The measures adopted to improve prisoners' living conditions and quality of life, and the strengthening of protection mechanisms such as the right to correspond confidentially with certain bodies, should lead to greater respect for the fundamental rights of detainees.

10. Mr. CAMARA (Country Rapporteur) said that the distinguished composition of the Portuguese delegation augured well for a fruitful and constructive dialogue with the Committee. The second periodic report, which had been prepared in accordance with the Committee's guidelines, albeit submitted somewhat late, bore witness to Portugal's determination to meet its international commitments.

11. Given the wealth of legislation recently enacted, his questions would take the form mainly of requests for clarification. With respect to article 3 of the Convention, paragraph 109 of the report, quoting article 33 of the Constitution, stated that extradition could be decided only by a judicial authority. According to paragraph 126, however, an application for extradition could be rejected following an examination by the Government. It was difficult to see how those two apparently contradictory statements could be reconciled. Paragraph 127, too, suggested that the Government could influence the workings of the courts in that regard.

12. With respect to article 4, he noted that the new Penal Code included a definition of torture. However, in view of the many allegations of ill-treatment, torture and even extrajudicial executions, it seemed that the new Code's aims had not been achieved in practice. Thus, in an article in the

Spanish daily newspaper El País dated 14 May 1997, António Rodrigues Maximiano, the Inspector-General of Internal Administration, stated that the current legislation did not afford sufficient protection to victims of police ill-treatment, and that the light sentences handed down, the slowness of the procedure and the lack of transparency concerning the results of investigations fostered a climate of impunity. The Committee would be very interested in hearing the Portuguese delegation's comments on that statement.

13. He noted from paragraph 119, subparagraph (e), of the report that a request for extradition was refused if the act to which it related was punishable by death or life imprisonment. While a refusal in the former case was understandable, a refusal on the grounds that the accused risked life imprisonment appeared to be incompatible with the provisions of article 8 of the Convention, where the person whose extradition was requested stood accused of torture.

14. In view of the frequent allegations of ill-treatment or torture by the forces of law and order, it appeared that current legislation was not achieving its desired effect. Article 11 of the Convention obliged the States parties to keep under systematic review arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment. He would, consequently, like to know what the outcome had been of the inquiries conducted by the Provedor and referred to in paragraph 235 of the report.

15. with respect to article 12, paragraphs 269 and 270 of the report stated that any victim of ill-treatment, abuse of authority or excessive force was entitled to lodge a complaint with either the administrative or the judicial authorities. The omission of torture from that list was presumably an oversight. More serious, however, was the report's silence regarding the obligation imposed on a State party's authorities to proceed to a prompt and impartial investigation, - proprio motu, in the Committee's interpretation - wherever there was reasonable ground to believe that an act of torture had been committed in any territory under its jurisdiction.

16. That obligation was distinct from the obligation under article 13, compliance with which was ensured by Portuguese legislation. In plain language, he would like to know whether Portugal made the investigation of cases of torture conditional on a prior complaint by the victim. If so, that would appear to be a breach of article 12 of the Convention. If not, he would be interested to hear what legislative provisions enabled the competent authorities to investigate a case, whether or not the victim had lodged a complaint.

17. Mrs. ILIOPOULOS-STRANGAS (Alternate Country Rapporteur), having thanked the delegation of Portugal for the second periodic report, which complied with the requirements of article 19 of the Convention, and for its oral presentation on recent developments, said she noted that paragraph 13 of the report listed a number of international instruments which Portugal had "adopted and ratified", whereas paragraph 4 referred only to the "adoption" of the Convention and wondered whether the implication was that the latter's domestic status was in some way inferior to that of the former.

18. Paragraphs 25, 149-167 and 171 referred to a 48-hour time limit within which an arrested person must be brought before an examining magistrate. Could that time limit be extended and, if so, for how long, on what grounds, and by whom?

19. Paragraph 69 referred to the decision to put an end to the use of exceptional methods of prolonging survival artificially, for which provision was made in article 50 of the Physicians' Code of Ethics. She wished to know who took that decision, and under what procedure. She also noted that, according to paragraph 84, all nationals, stateless persons or aliens residing in Portugal were regarded as potential post mortem organ donors unless they had informed the Ministry of Health that they did not wish to be donors. How were non-nationals not wishing to be donors to know that they had a legal obligation to declare the fact? The onus should surely be on those wishing to be donors to declare the fact, as was the usual practice elsewhere.

20. With respect to article 3, the Committee had learned with interest of the recent amendment of article 33 of the Constitution. She doubted whether, prior to that amendment, it had complied with the requirements of article 3 of the Convention and noted that, even as amended, article 33 made no reference to moral or psychological harm - a regrettable omission.

21. Paragraph 135 stated that, in order to be protected from deportation, the person in question must invoke the fear of persecution and provide evidence thereof within the prescribed time limit. That provision did not comply fully with the requirements of article 3 of the Convention.

22. She requested fuller details regarding the "exceptions" referred to in paragraph 173, and also regarding the exceptions covered by the Code of Military Justice (para. 186), on the assumption that those exceptions had survived the recent changes affecting the jurisdiction of military courts.

23. With respect to article 10, she asked whether any steps were taken to provide specific information or training concerning the Convention, in particular to police and prison officers.

24. Noting from paragraph 228 of the report that the Provedor de Justicia (ombudsman) was appointed by the Assembly of the Republic, she said that she would like more information concerning the majority by which he was appointed, the term of his mandate and the reasons, if any, for its suspension.

25. With regard to paragraph 258 of the report, concerning periods spent in special security cells, it was unclear whether it was the Directorate-General of Prison Service which had sole competence, as in the case of periods exceeding 15 consecutive days, to decide whether to isolate a detainee for a lesser period. She would also like to know whether there was any judicial or administrative recourse against such decisions.

26. In connection with her assigned task of examining allegations by non-governmental organizations (NGOs), she wished to hear the Portuguese response to the Amnesty International report of ill-treatment of street

children in Madeira by the police. Moreover, in view of the content of paragraph 283 concerning disciplinary measures against prison warders, it was surprising that Amnesty International had still received no response concerning a particular case of ill-treatment by such officials.

27. She was much alarmed by the numerous allegations of recent cases involving deaths, as well as others involving the ill-treatment of judges and lawyers and would welcome the delegation's comments on the subject. It would seem that, notwithstanding the exemplary measures enshrined in the Portuguese Constitution for the protection and promotion of human rights, stricter legislation might be required to ensure the effective punishment of public officials who abused their power.

28. Lastly, she highlighted the anomaly of the Supreme Court's rejection of the additional punishment of dismissal from service for police officers found guilty of ill-treatment and commented that, at the very least, such officers should be suspended from duty.

29. Mr. SORENSON, having commended the comprehensiveness of the report, said he wished to know the status enjoyed by the Physicians' Code of Ethics referred to in paragraph 66 et seq., which he especially welcomed. He would also like to know whether a doctor who was ordered to carry out an act he believed to be in breach of medical ethics could object and refer the matter to the Medical Association. Concerning paragraph 68, he wondered whether there were any set rules if a doctor was placed in the difficult position where a victim refused his consent to notification of his ill-treatment to the police or the competent social authorities.

30. While commending the measures concerning potential post mortem organ donors referred to in paragraph 84, he was concerned that persons such as tourists or temporary visitors to Portugal might be included in those measures, since that would create problems.

31. In view of the paramount role of the Ethics Commission mentioned in paragraph 98, he wished to know whether Portugal had a single central commission, as opposed to many, and also requested details of its membership.

32. With respect to article 3, he would like some clarification of the seemingly unfair situation whereby, a person arriving in Portugal with false travel documents who failed to declare himself immediately to be an asylum-seeker could be sent back to his country of origin.

33. He endorsed the questions asked by the previous speaker with respect to article 10 and would also like to know whether education regarding the prohibition against torture was included on the curriculum of medical students.

34. Lastly, he said that the systematic review provided for under article 11 of the Convention should, in the light of article 16, encompass not only torture, but also inhuman or degrading treatment or punishment.

35. Mr. PIKIS said that, according to paragraph 39 of the core document (HRI/CORE/1/Add.20), the Attorney-General was appointed and relieved of his post by the President of the Republic. He therefore wished to know whether his was a political or judicial post and requested information on his terms of service. He also wondered whether it was the duty of the Attorney-General to defend democratic legality, and if so, what form that duty took and how it was applied.

36. With regard to the dissemination of legal information discussed in paragraph 76 of the core document, he inquired whether any steps had been taken to bring the provisions of the Convention to the notice of the general public and, more particularly, to that of detainees and prisoners, emphasizing the benefit of furnishing the latter with details of their rights in respect of arrest and detention.

37. He also requested information concerning the role and powers of the Constitutional Court, particularly in terms of the rulings on the issues of unconstitutionality referred to in paragraphs 61 and 80 of the core document. As for the role of the ombudsman, referred to in paragraph 227 of the report, he would like to know whether there were any restrictions on complaints concerning legality.

38. He wondered if there were any impediments to, or questioning of the desirability of, incorporating the European Convention on Human Rights into Portuguese law, as it was his impression that such incorporation had not yet taken place.

39. With respect to the general application of Portuguese law with a view to stemming abuse and torture, he was concerned by the wide-ranging complaints of ordinary and serious abuse reported annually by Amnesty International since 1994, according to which very few of those accused of torture were ever convicted. He would like to know, therefore, how the Portuguese authorities intended to address that problem of apparent complacency with regard to accusations of torture and whether there had been any improvement in that situation since it had last been reviewed by the Committee in 1993. He also questioned the utility of the security police. Transgression of authority was seemingly common in that force and complaints against its members were rife. He suggested the alternative of assigning special duties to the ordinary police.

40. Mr. YAKOVLEV, while agreeing that the report provided clear evidence of the efforts of the Portuguese Government to implement the Convention fully, said that he continued to have concerns. Under article 143 of the Penal Code, for example, most cases of ill-treatment by law-enforcement officers would be regarded as crimes of common assault. Under paragraph 2 of the same article, however, the victim was required to make an official complaint prior to the instigation of any criminal investigation, failing which he had no other remedy. The effect was thus to transfer the burden of proof to the victim, a measure which was not conducive to the prevention of torture.

41. Paragraph 171 of the report stated that there was a maximum period of 48 hours to validate or continue pre-trial detention and that the judge must be informed of the reasons for the remand in custody, communicate them to the detainee, question him and allow him to defend himself. It would seem that the arrested person had to assume his own defence without the assistance of counsel, an inference borne out by the statement in paragraph 180 that a person must be charged - thereby acquiring the status of defendant - before acquiring the right to select his defence counsel or to request the court to appoint one.

42. As pre-trial detention ended only after six months if no charge had been filed against the accused (paragraph 172), it followed that a person might be denied the status of defendant for six months. That kind of situation was conducive to the worst kinds of abuse, including ill-treatment and torture.

43. Mr. ZUPANČIČ, having commended the report which was both exhaustive and legally very interesting, said that torture was dealt with in articles 243, 244 and 412 of the Portuguese Penal Code. There was a slight discrepancy between the definition of torture in the Convention and that contained in article 243. The Convention defined torture strictly as a delictum proprium, which could be committed only by a public official. Article 243 of the Penal Code, on the other hand, referred to "any person" and not just to public officials, as did article 244, although it dealt with an aggravated form of the offence provided for under article 243.

44. Article 412, on the other hand, dealt with a delictum proprium, but an official who resorted to violence, threats or other illegal means of constraint was liable only to between six months' and four years' imprisonment, whereas a person found guilty of breaching article 243 was liable to between one and five years' imprisonment. An individual police officer would thus be in a better position if he was prosecuted under article 412 rather than under article 243.

45. In the light of article 2, paragraph 2, of the Convention, Portugal should include a specific provision in its Penal Code excluding the possibility of using the doctrine of necessity or of the "lesser evil" as a justification for torture. Even if 50 lives could be saved by locating a "ticking bomb", a law-enforcement officer was not justified in using torture to obtain the requisite information.

46. He asked whether attempts to commit torture and complicity in acts of torture were punishable under the Penal Code.

47. The maximum period of pre-trial detention seemed very long, although it was similar to the periods provided for in many other European countries. The federal rules of criminal procedure in the United States of America required a person to be released 70 days after indictment if no trial had taken place. The comparable period in Portugal was months.

48. Offences of common assault covered by article 143 of the Portuguese Penal Code would fall under the definition in article 16 of the Convention of acts of cruel, inhuman or degrading treatment or punishment which did not

amount to torture. However, articles 10, 11, 12 and 13 would also be applicable to such acts. According to article 12, the State party must conduct an ex officio investigation in any such situation.

49. Mr. REGMI said that the report was informative, comprehensive and exemplary.

50. With reference to paragraphs 254 to 261, he would like to know the difference between special security cells and solitary confinement cells and between detention in special security cells and incommunicado detention. Could a detainee appeal against an order for uninterrupted isolated detention and, if so, what authority was competent to hear the appeal?

51. With reference to paragraphs 262 to 265, he wished to know who determined whether the use of force was justified. The use of any kind of force was explicitly and absolutely prohibited by the Convention.

52. After examining Portugal's initial report (CAT/C/9/Add.15), the Committee had expressed concern about cases of ill-treatment and torture in police stations and other places of detention. It was therefore disturbing to read, in the 1996 report on Portugal of the European Committee for the Prevention of Torture, that a significant proportion of the persons interviewed alleged that they had been ill-treated while in police custody.

53. Mr. BURNS said he noted from the delegation's oral introduction that special courts of the judicial branch had taken over jurisdiction from military tribunals in cases involving offences by military personnel except in time of war. What exactly was a special court of the judicial branch?

54. While Portugal had excellent institutions for the protection of human rights, it seemed from the information available, particularly the Amnesty International reports, that the practical implementation of human rights principles still left a great deal to be desired, at least with regard to the behaviour of law-enforcement officers and field personnel. If the information was accurate, impunity was still a problem, as was the amount of time it took to investigate allegations of violence by law-enforcement officers, to bring such cases to trial and to complete the legal proceedings. Reports of cases of detainees being shot indicated that police officers should be given refresher courses in the use of firearms.

55. He was also disturbed by the practice of issuing amnesties to law-enforcement personnel who had been convicted of such offences in Portugal. He would like to know how frequently the executive used its amnesty power and what rationale it offered for such action. The fact that the victims of casual violence by law-enforcement officers came from all strata of society and all walks of life seemed to reflect a disturbing subculture of random violence. He was also struck by the very trivial circumstances that could engender an extreme response.

56. Mrs. ILIOPOULOS-STRANGAS said that her doubts concerning the removal of organs from dead persons did not relate solely to foreigners. She feared that the requirement for non-donors to make a declaration to the National Register of Non-Donors might lead to abuses on the part of traffickers in human organs

and might amount in some cases to inhuman or degrading treatment. A significant number of people were probably unaware of the existence of the law, and some individuals might object for religious or ethical reasons to the removal of their organs after death.

57. The CHAIRMAN invited the delegation to respond to the Committee's questions at the beginning of the following meeting.

58. The delegation of Portugal withdrew.

The public part of the meeting rose at 11.50 a.m.